

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APLUS HOLDINGS INC.,

Plaintiff-
Counterclaim Defendant,

- against -

IVAN VACHOVSKY and
LILIAN VACHOVSKY,

Defendants-
Counterclaim Plaintiffs.

08cv2760(MGC)(DFE)

**JOINT REPORT PURSUANT
TO FED. R. CIV. P. 26(f)**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, meetings were held via telephone on June 17 and June 18, 2008 by Eric Leon and Mindy Yu, counsel to Plaintiff-Counterclaim Defendant Aplus Holdings, Inc. (“Aplus”), with Alon Markowitz and Partha Chatteraj, counsel to Defendants-Counterclaim Plaintiffs Ivan and Lilian Vachovsky (the “Vachovskys”). In the June 17 and June 18 conferences, based on the information currently available to them, counsel for the parties agreed to the following:

1. Pre-Discovery Disclosures. The disclosures required by Federal Rule of Civil Procedure 26(a)(1) will be exchanged on July 1, 2008. The parties agree that service of such initial disclosures by e-mail PDF attachments shall constitute sufficient service pursuant to Fed. R. Civ. P. 5(b)(2)(D).

2. Discovery Plan. The parties propose the following discovery plan.

- a. Initial document requests, requests for admissions, and interrogatories shall be served no earlier than July 1, 2008 and no later than July 15, 2008. The parties agree that service of such initial document requests and interrogatories by e-mail PDF attachments shall constitute sufficient service pursuant to Fed. R.

Civ. P. 5(b)(2)(D). The parties are not foreclosed from propounding additional written discovery requests before September 15, 2008.

- b. Each party is to provide its responses to these initial document requests and interrogatories no later than August 15, 2008.
- c. The parties agree that depositions may be taken at any suitable time after August 15, 2008.
- d. All fact discovery shall be completed by October 31, 2008. As required by the Court's Individual Practices, all trial witnesses shall be disclosed by the parties no later than October 13, 2008.
- e. Any electronically stored information will be produced as image files (e.g., PDF or TIFF), in reasonably searchable format. The parties reserve the right to request that (a) when produced, the image will preserve the integrity of the electronic document's contents, including (but not limited to) original formatting of the document, its metadata, and its revision history where applicable; and (b) electronically stored information will be produced in a native format only upon specific agreement of the parties or upon a showing of particularized need by the requesting party.
- f. The parties agree that discovery may be needed on relevant issues raised by the parties' pleadings and defenses, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Civil Rules of this Court.

- g. Aplus shall disclose information pursuant to Rule 26(a)(2) regarding its expert witnesses, if any, by November 7, 2008. The Vachovskys shall disclose information pursuant to Rule 26(a)(2) regarding their expert witnesses, if any, by November 21, 2008. Expert discovery, including depositions and any rebuttal reports and testimony, shall be completed by December 19, 2008.
- h. The parties do not anticipate any unusual issues with respect to the assertion of privilege. To the extent any such issues arise, the parties will seek direction from the Court if they are unable to resolve the issues by mutual consent. The parties hereby agree that they need not log or otherwise disclose responsive privileged communications involving litigation counsel after December 17, 2007.
- i. The parties anticipate that they will be submitting to the Court a Proposed Confidentiality Protective Order, which will include provisions for the designation and protection of certain materials that should be treated as confidential and provisions for claims of inadvertent production of privileged or confidential material.

3. The parties agree that dispositive motions shall be filed no later than January 23, 2009, subject to any orders resulting from any pre-motion conference for such dispositive motions that may be required by the Court. Briefs in opposition to any such dispositive motions shall be filed no later than February 23, 2009. Reply briefs in support of any such dispositive motions shall be filed no later than March 9, 2009. The parties agree to set

return dates on their motions in accordance with both the Court's Individual Practices and the foregoing briefing schedule, and the parties agree to request that the Court permit the parties to set such return dates more than 29 days after service of such motions, as required by the Court's Individual Practices.

4. The parties suggest that the joint pretrial order be filed by April 6, 2009.

5. The parties do not believe this matter is appropriate for alternative dispute resolution.

Respectfully submitted,

Dated: June 18, 2008
New York, New York

s/ Alon M. Markowitz
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